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October 9, 2008

Jeff S. Jordan, Esq.
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: MUR 6050

Dear Mr. Jordan:

On behalf of Boswell for Congress and Carl McGuire, as Treasurer, this letter is submitted in response to the complaint filed by Phyllis Stevens, *et al.*, dated August 6, 2008. The complaint involves three mail pieces paid for by an independent group called "Independent Voices" that attacked Representative Boswell's primary opponent, Ed Fallon. The complaint alleges that these mailings were coordinated with Boswell for Congress and thus were illegal contributions. These allegations are unsupported and false. The Federal Election Commission should find no reason to believe that Boswell for Congress violated the Federal Election Campaign Act of 1971, as amended, or the Commission's regulations, and it should dismiss the matter.

I. Facts

Leonard Boswell is the Representative from Iowa's Third Congressional District. He is currently a candidate for that office. Mack Crounse Group ("MCG") performs direct mail consulting services for the Boswell campaign. MCG produced approximately eight direct mail pieces for the campaign in the 2008 primary election, including one titled "Let Down," which complainants have attached to their complaint. MCG, in consultation with the campaign, designed "Let Down," determined its target audience, and made all other strategic decisions pertaining to the mailing. See Affidavit of Jim Crounse.

After MCG designed "Let Down," it sent the piece to Carter Printing in Des Moines, Iowa, with instructions to print and mail the piece. On information and belief, Carter Printing is one of only a few print shops in central Iowa to use union labor, thus making it a preferred printer for Democrats and progressive groups. Carter Printing subcontracted with Data Solutions, a mail house in Des Moines, Iowa, to mail the piece. Carter printed "Let Down" with Data Solutions'

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bulk mail permit number and indicia, and then shipped the pieces to Data Solutions for labeling and mailing. *See* Affidavit of Ron Hoyt. Neither the campaign nor MCG was aware of Carter Printing's decision to hire Data Solutions or use Data Solutions' bulk mail permit.

During the primary election, Congressman Bowell was opposed by Ed Fallon. Complainants have identified three direct mail pieces that attacked Ed Fallon and bore the disclaimer "Paid for by Independent Voices, Red Brannan Chair." Neither the Boswell campaign nor MCG was involved in any way in these pieces. Unbeknownst to the campaign or MCG, the three pieces were printed by Carter Printing, with Data Solutions' bulk mail permit number and indicia.

According to Ron Hoyt, President of Carter Printing, it is Carter Printing's practice to keep client information confidential. Carter Printing did not share any information about "Let Down" or any other Boswell direct mail piece with Independent Voices. *See* Affidavit of Ron Hoyt. Complainants present no information to suggest that Boswell campaign information was used in connection with the Independent Voices mailings, and indeed none was used.

II. Legal Analysis

A. Applicable Law

For a communication to be coordinated under Commission rules, it must satisfy at least one of the enumerated "content" standards, and at least one of the enumerated "conduct standards." 11 C.F.R. § 109.21(a)(2)-(3). The conduct standard is met if, *inter alia*:

- (1) The communication is created, produced, or distributed at the request, suggestion, or assent of a candidate, authorized committee, political party committee or agent;
- (2) The candidate or authorized committee was materially involved in decisions regarding the content, intended audience, means or mode of communication, specific media outlet to be used, timing, frequency, size, prominence or duration of the communication;
- (3) There is substantial discussion about the communication between the person paying for the communication and the candidate, authorized committee, political party or agent of the campaign. A discussion is substantial if information about the candidate's plans, projects, activities or needs are conveyed and that information is material to the creation, production or distribution of the communication;
- (4) The person paying for the communication and the campaign share certain types of common vendors, and that vendor uses or conveys information about the

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candidate's plans, projects, activities or needs, or uses information in its possession that was obtained through their relationship with the candidate and that information is material to the creation, production or dissemination of the communication;

11 C.F.R. § 109.21(d)(1)-(4). A candidate does not receive an in-kind contribution that results from conduct described in sections (d)(4) unless the candidate or the candidate's authorized committee engages in conduct described in (d)(1), (d)(2), or (d)(3). 11 C.F.R. § 109.21(b)(2).

B. Alleged Violation

The Complaint alleges that the three Independent Voices mail pieces were coordinated with the Boswell campaign. The Complaint presents no specific facts to demonstrate that any of the conduct standards have been met. The facts demonstrate that no coordination occurred.

1. Similarity of Mail Pieces

First, the Complaint assumes that there was coordination because "Let Down" and the Independent Voices mail pieces "carried the similar phrasing, similar visual appearance, and same typefaces."

There is nothing about the appearance of the mail pieces that evidences coordination. The pieces look like most direct mail pieces: they contain big, bold lettering set next to large images, and are approximately 8 1/2 by 11 inches in size. These shared generic characteristics cannot support a finding of coordination.

Further, any suggestion that the pieces shared the same designer is refuted by the affidavit of Jim Crounse, submitted with this response. It is undisputed that MCG designed "Let Down" and that neither MCG nor the Boswell campaign had any involvement in the production of the Independent Voices pieces.

2. Bulk Mailing Permit Number and Indicia

Second, the Complaint alleges that there was coordination because both "Let Down" and the Independent Voices pieces bore the same bulk mailing permit number and indicia symbol. Again, complainants have failed to allege facts sufficient to demonstrate coordination, and the available information demonstrates none occurred.

As explained in the Crounse affidavit, MCG contracted with Carter Printing to print and mail "Let Down." Carter Printing then arranged to have the piece labeled and mailed by Data Solutions, a mail house in Des Moines, Iowa, and printed "Let Down" with Data Solutions' bulk

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mailing permit number and indicia symbol. Independent Voices separately and independently arranged to have Carter Printing print the Independent Voices pieces with Data Solutions' indicia, without the Boswell campaign's or MCG's knowledge. As one of only a few union print shops in central Iowa, Carter Printing was a frequent producer of Democratic and progressive-leaning mail.

Simply sharing the same printer and mail house does not create any liability for Boswell for Congress. First, for there to be coordination through use of a common vendor, the vendor must perform one of the services enumerated in 11 C.F.R. §§ 109.21(d)(4)(ii). Neither Carter Printing nor Data Solutions performed any of these services: Carter Printing printed the mail piece and Data Solutions mailed it pursuant to MCG's instructions. Neither was involved in any substantive way in the preparation or targeting of the pieces.

Merely printing a mail piece does not constitute "producing" within the meaning of the common vendor rules. All of the services listed in § 109.21(d)(4)(ii) – "Development of media strategy," "Selection of audiences," "Developing the content of a public communication," etc. – contemplate services where the vendor is taking part in strategic and substantive decisions. In this context, the word "production" must only be read to apply to situations where a vendor is making strategic and substantive decisions about the content or appearance of the piece. Here, MCG produced "Let Down" by designing the piece and determining its target audience. Carter Printing played no substantive role at all; it merely printed "Let Down" pursuant to MCG's instructions. The services it provided were no different than those that could be obtained at a local Kinkos; they do not trigger the common vendor rules.

Even if a common vendor was used, the common vendor must have conveyed material information about the candidate to the entity paying for the communication. 11 C.F.R. §§ 109.21(d)(4)(iii). Here, it is undisputed that Carter Printing did not convey any information about the Boswell campaign's mail program to Independent Voices. See Affidavit of Ron Hoyt. Without information sharing, there can be no coordination.

Finally, even if Carter Printing or Data Solutions was a common vendor and conveyed campaign information, Boswell for Congress would not have committed any violation. Under the Commission's regulations, a candidate does not receive an in-kind contribution under (d)(4) *unless* the candidate or the candidate's authorized committee engages in conduct described in (d)(1), (d)(2), or (d)(3). 11 C.F.R. § 109.21(b)(2). The complaint alleges no facts to show that Rep. Boswell, Boswell for Congress, or any of their agents engaged in this kind of conduct. To the contrary, Rep. Boswell, Boswell for Congress, and their agents engaged in no coordination. The complaint has alleged no facts that can support a finding that the Boswell campaign accepted an impermissible in-kind contribution.

III. Conclusion

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In sum, the Complaint does not allege any facts that, if true, would lead to the conclusion that Independent Voices' communications were coordinated with the Boswell campaign. To the contrary, the undisputed facts demonstrate that there was no coordination. Accordingly, for the reasons set forth above, Boswell for Congress respectfully requests that the complaint against it be dismissed.

Very truly yours,

A handwritten signature in black ink, appearing to read "Brian G. Svoboda", with a stylized, cursive script.

Brian G. Svoboda

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